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August 22, 2005

Commissioner Robert E. Nicolay
Chairman, Certificate of Need Task Force
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

**RE: TASK FORCE RECOMMENDATION CONCERNING AMBULATORY
SURGICAL SERVICES**

Dear Chairman Nicolay and Task Force Members:

On behalf of the *Maryland Ambulatory Surgical Association (MASA)*, an organization representing single and multi-specialty practices across the state of Maryland, we are submitting this letter in response to the discussion and preliminary direction of the Task Force that was articulated at the August 11, 2005 meeting of the Task Force. **MASA is very concerned about these comments and believes that if the Task Force follows through, that it will have ignored the stated goals and objectives articulated by Chairman Salamon when this Task Force was created.**

The objectives of the CON Task Force are to (1) review and recommend modifications in the scope of services and facilities regulated under the Certificate of Need program; (2) review and recommend enhancements in the Certificate of Need application review process and (3) review and recommend enhancements in the monitoring of Certificate of Need projects under development.¹ MASA has and continues to be supportive of this review process. The discussion that took place during the August 11, 2005 Task Force meeting on ambulatory surgery was consistent with discussions on other issues being reviewed by the Task Force. However, it was clear from that discussion and from comments made by several Task Force members, that there is a lack of expertise on the Task Force in matters concerning ambulatory surgery and that unlike other issues, any changes in this area will have significant ramifications for a number of entities: hospitals, ASCs, physicians, patients, insurers and the state. While these entities may be

¹ Certificate of Need Program Task Force, Briefing to the Maryland Health Care Commission, Steven J. Salamon, Chairman, March 22, 2005

impacted directly or indirectly with changes in other areas being reviewed by the Task Force, because all have a direct interest in this area, the proverbial issue of “unintended consequences” is most prevalent in the area of ambulatory surgery.

During the discussion on August 11th, it was suggested that the Task Force not make any recommendation with respect to Certificate of Need changes with ambulatory surgery and that the issue be forwarded to the full commission for their deliberation. **MASA is very much opposed to this suggestion.** This suggestion is not what Chairman Salamon articulated in his March 22nd comments when he created the Task Force. To date, no other issue, to MASA’s knowledge, discussed or reviewed by the Task Force has been “punted” to the full commission. If the issues are too complex and too time consuming for a full review by the Task Force, no changes should occur in this area and a recommendation to that effect should be forwarded to the full Commission.

MASA believes that issues impacting ambulatory surgery are broad in scope and ones that need to be carefully reviewed. The review of these issues will take longer than just a few hours of discussion or a few meetings of the Task Force. With all due respect to the individuals on the Task Force who are giving their time, it will need the input of individuals who have greater knowledge and expertise in the specific area of ambulatory surgery than is represented on the Task Force. **Therefore, MASA would strongly urge the Task Force to make no changes to the Certificate of Need program for ASC’s.** To enable this review and implementation of any policy changes to take place in an environment where these complex issues can be carefully considered, MASA would recommend and fully support the establishment of a Technical Advisory Committee (TAC) which would be made up of industry representatives that could fully examine the issues and make recommendations to the Commission. MASA would like to state that it has offered this recommendation in the past and has supported a Technical Advisory Committee to do a full review of issues related to ambulatory surgery. MASA offered this recommendation in its October 19, 2001 and December 5, 2001 comments to the MHCC regarding CON for ASC’s.

With that said, MASA would respectfully suggest the following recommendation for the Task Force’s consideration:

“Given the complex nature and time that it will take to fully review and analyze the issues concerning ambulatory surgery services, the Task Force recommends that no changes be made at this time to the Certificate of Need program for ambulatory surgery. The Task Force, in its deliberations, did find inconsistencies with and concerns around the definition of “operating rooms” and “procedure rooms” and recommends the development of stricter definitions of “operating room” and “procedure room” to be employed in both CON

Commissioner Robert E. Nicolay
Chairman, Certificate of Need Task Force
August 22, 2005
Page 3

regulation and licensure. Lastly, the Task Force would recommend that a Technical Advisory Committee be established by the Commission to more fully review the issues of ambulatory surgery to be made up of representatives of the industry and commission staff and that a full report, with recommendations, be made to the full Commission by September 1, 2006.”

We appreciate this opportunity to comment on behalf of the Maryland Ambulatory Surgical Association. As we have outlined before in our oral and written comments, MASA believes Maryland’s current CON policy should remain in effect, without changes at this point in time, for ambulatory surgery. MASA believes that the system in place protects patient safety and provides appropriate oversight of the industry by the state. MASA believes that in order to better clarify the CON rules and regulations, tighter definitions of “operating room” and “procedure room” are needed in regulation. Finally, MASA supports and recommends the creation of a technical advisory committee to review more thoroughly the issues effecting ambulatory surgery

Sincerely,

Deron A. Johnson

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Cc: Certificate of Need Task Force Members